APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,005	07/12/2005	Junya Kaku	050445	8929

23850   7590   09/02/2008
KRATZ, QUINTOS & HANSON, LLP
1420 K Street, N.W.
Suite 400
WASHINGTON, DC 20005

EXAMINER
LIANG, VEI CHUNG

ART UNIT	PAPER NUMBER
2165	

MAIL DATE	DELIVERY MODE
09/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/542,005	KAKU, JUNYA
	Examiner	Art Unit
	VEI-CHUNG LIANG	2165

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires _3_ months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _1-17_.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Kuen S Lu/
Primary Examiner, Art Unit 2169

Continuation of 11. does NOT place the application in condition for allowance because:

1. On page 6, lines 6 - 13, regarding, claims 7, and 13 - 17, the Applicant argues that because of claim 7's dependence of claim 1, the data structure of claim 1 includes the file storing menu display control data, and therefore the file storing menu display control data is also on the data-storage medium, which the Examiner admits is patentable. It is noted that the other dependent claims having the same preamble as the rejected claims.

  As to the above argument, the Examiner respectfully disagrees because:

  Claim 7 and other dependent claims 13 -17 recited the preamble as "a data structure according to claim...". And Claim 1 recited "a data storage medium containing a data structure of men display control data..." The relationship between the dependent claim and the independent claim is established by the phrase "according to". "According to" is defined "as stated or attested by" in Merriam-Webster dictionary. Therefore, claim 7 and other dependent claims 13 - 17 are interpreted as referring to the data structure comprising a file but not the data storage medium comprising a file. As such, the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101.

2.   On page 7, lines 6 - 12, regarding claim 8, the Applicant argues that Yamaguchi does not teach "when a desired small item is selected, specifies a plurality of small items dependent on said desired small item, based on said dependency relationship information". The Applicant argues that in Yamaguchi's teaching, when a user selects, say STILL menu option, there is no plurality of other items that have some special relationship with STILL menu option. When the user selects STILL, nothing jumps up in front of the user, nothing is displayed; nothing is specified.

  As to the above argument, the Examiner respectfully disagrees because:

  Yamaguchi discloses "so that, when a desired small item is selected, said processor can display a plurality of small items dependent on said desired small item, based on said dependency relationship information" as when shift key is pressed, [detailed menu] and [simple menu] sub menus are displayed for further selection of menu items (Yamaguchi, column 20, lines 24 - 27).

3.   On page 7, lines 12 - 18, regarding claim 8, the Applicant further argues that no plurality of other items is specified. The Applicant argues that the Examiner mentions the duplication status flag D100e and asserts that it anticipated the claim, which refers to "two kinds of menu item data D100f". However, there is no connection established between this flag and simple and detailed menu. The Applicant has reviewed the reference and sees no anticipation by this flag D100e.

As to the above argument, the Examiner respectfully disagrees because:

Yamaguchi teaches such established connection between the flag and menus as "the duplication status flag D100e is a flag that indicates as TRUE/FALSE whether or not the job-dial compatible application has two kinds of menu item data simultaneously; if it has two kinds, two kinds of menu item data D100f also exist" (Yamaguchi, column 17, lines 46 - 50).

  Therefore the plurality of other items is specified.

4.   On page 7, lines 20 - 24, the Applicant argues that the Applicant's display includes a specifier that specifies a plurality of small item being dependent on a desired small item based on the dependency relationship information when the desired small item is selected. And no such specifier is even suggested by Yamaguchi.

As to the above argument, the Examiner respectfully disagrees because:

  Yamaguchi teaches "display includes a specifier that specifies a plurality of small item being dependent on a desired small item based on the dependency relationship information when the desired small item is selected" as a as the hierarchy icon 305 is also displayed to the right of menu item [simple menu] (Yamaguchi, column 20, lines 3 - 5), giving visual indication of the existence of a lower-level sub-menu (Yamaguchi, column 18, lines 23 - 24).

5.   On page 8, lines 1 - 4, the Applicant argues that Yamaguchi does not teach a menu display apparatus capable of coping with a variety of menu displays by means of the same program.

  As to the above argument, the Examiner respectfully submits that As to the above argument, the Examiner respectfully submits that such limitation regarding "a menu display apparatus capable of coping with a variety of menu displays by means of the same program" is not recited in any of the claims.

Please further note In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. > E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily)..